

SB3433



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3433

Introduced 2/14/2020, by Sen. Donald P. DeWitte

SYNOPSIS AS INTRODUCED:

820 ILCS 305/11

from Ch. 48, par. 138.11

Amends the Workers' Compensation Act. Establishes standards with respect to cannabis for impairment sufficient to bar compensation for injuries to employees who are intoxicated. Provides that the presence of 5 nanograms of tetrahydrocannabinol in the blood or 10 nanograms of tetrahydrocannabinol in other bodily substances shall create a rebuttable presumption that intoxication is the proximate cause of the injury. Contains the statement: "Authorized use may be evidenced only by written consent by the employer to the employee, which consent shall not be unreasonably withheld".

LRB101 18785 JLS 68242 b

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Workers' Compensation Act is amended by
5 changing Section 11 as follows:

6 (820 ILCS 305/11) (from Ch. 48, par. 138.11)

7 Sec. 11. Measure of responsibility. Except as provided in
8 Section 1.2, the compensation herein provided, together with
9 the provisions of this Act, shall be the measure of the
10 responsibility of any employer engaged in any of the
11 enterprises or businesses enumerated in Section 3 of this Act,
12 or of any employer who is not engaged in any such enterprises
13 or businesses, but who has elected to provide and pay
14 compensation for accidental injuries sustained by any employee
15 arising out of and in the course of the employment according to
16 the provisions of this Act, and whose election to continue
17 under this Act, has not been nullified by any action of his
18 employees as provided for in this Act.

19 Accidental injuries incurred while participating in
20 voluntary recreational programs including but not limited to
21 athletic events, parties and picnics do not arise out of and in
22 the course of the employment even though the employer pays some
23 or all of the cost thereof. This exclusion shall not apply in

1 the event that the injured employee was ordered or assigned by
2 his employer to participate in the program.

3 Notwithstanding any other defense, accidental injuries
4 incurred while the employee is engaged in the active commission
5 of and as a proximate result of the active commission of (a) a
6 forcible felony, (b) aggravated driving under the influence of
7 alcohol, other drug or drugs, or intoxicating compound or
8 compounds, or any combination thereof, or (c) reckless homicide
9 and for which the employee was convicted do not arise out of
10 and in the course of employment if the commission of that
11 forcible felony, aggravated driving under the influence, or
12 reckless homicide caused an accident resulting in the death or
13 severe injury of another person. If an employee is acquitted of
14 a forcible felony, aggravated driving under the influence, or
15 reckless homicide that caused an accident resulting in the
16 death or severe injury of another person or if these charges
17 are dismissed, there shall be no presumption that the employee
18 is eligible for benefits under this Act. No employee shall be
19 entitled to additional compensation under Sections 19(k) or
20 19(l) of this Act or attorney's fees under Section 16 of this
21 Act when the employee has been charged with a forcible felony,
22 aggravated driving under the influence, or reckless homicide
23 that caused an accident resulting in the death or severe injury
24 of another person and the employer terminates benefits or
25 refuses to pay benefits to the employee until the termination
26 of any pending criminal proceedings.

1 Accidental injuries incurred while participating as a
2 patient in a drug or alcohol rehabilitation program do not
3 arise out of and in the course of employment even though the
4 employer pays some or all of the costs thereof.

5 Any injury to or disease or death of an employee arising
6 from the administration of a vaccine, including without
7 limitation smallpox vaccine, to prepare for, or as a response
8 to, a threatened or potential bioterrorist incident to the
9 employee as part of a voluntary inoculation program in
10 connection with the person's employment or in connection with
11 any governmental program or recommendation for the inoculation
12 of workers in the employee's occupation, geographical area, or
13 other category that includes the employee is deemed to arise
14 out of and in the course of the employment for all purposes
15 under this Act. This paragraph added by this amendatory Act of
16 the 93rd General Assembly is declarative of existing law and is
17 not a new enactment.

18 No compensation shall be payable if (i) the employee's
19 intoxication is the proximate cause of the employee's
20 accidental injury or (ii) at the time the employee incurred the
21 accidental injury, the employee was so intoxicated that the
22 intoxication constituted a departure from the employment.
23 Admissible evidence of the concentration of (1) alcohol, (2)
24 cannabis as defined in the Cannabis Control Act, (3) a
25 controlled substance listed in the Illinois Controlled
26 Substances Act, or (4) an intoxicating compound listed in the

1 Use of Intoxicating Compounds Act in the employee's blood,
2 breath, or urine at the time the employee incurred the
3 accidental injury shall be considered in any hearing under this
4 Act to determine whether the employee was intoxicated at the
5 time the employee incurred the accidental injuries. If at the
6 time of the accidental injuries: (1) there was 0.08% or more
7 by weight of alcohol in the employee's blood, breath, or urine;
8 (2) there was a tetrahydrocannabinol concentration of 5
9 nanograms or more in the whole blood or 10 nanograms or more in
10 another bodily substance; (3) ~~or if~~ there is any evidence of
11 impairment due to the unlawful or unauthorized use of ~~(1)~~
12 cannabis, as defined in the Cannabis Control Act, ~~(2)~~ a
13 controlled substance listed in the Illinois Controlled
14 Substances Act, ~~or (3)~~ an intoxicating compound listed in the
15 Use of Intoxicating Compounds Act; or (4) ~~if~~ the employee
16 refuses to submit to testing of blood, breath, or urine, then
17 there shall be a rebuttable presumption that the employee was
18 intoxicated and that the intoxication was the proximate cause
19 of the employee's injury. Authorized use may be evidenced only
20 by written consent by the employer to the employee, which
21 consent shall not be unreasonably withheld. The employee may
22 overcome the rebuttable presumption by the preponderance of the
23 admissible evidence that the intoxication was not the sole
24 proximate cause or proximate cause of the accidental injuries.
25 Percentage by weight of alcohol in the blood shall be based on
26 grams of alcohol per 100 milliliters of blood. Percentage by

1 weight of alcohol in the breath shall be based upon grams of
2 alcohol per 210 liters of breath. Any testing that has not been
3 performed by an accredited or certified testing laboratory
4 shall not be admissible in any hearing under this Act to
5 determine whether the employee was intoxicated at the time the
6 employee incurred the accidental injury.

7 All sample collection and testing for alcohol and drugs
8 under this Section shall be performed in accordance with rules
9 to be adopted by the Commission. These rules shall ensure:

10 (1) compliance with the National Labor Relations Act
11 regarding collective bargaining agreements or regulations
12 promulgated by the United States Department of
13 Transportation;

14 (2) that samples are collected and tested in
15 conformance with national and State legal and regulatory
16 standards for the privacy of the individual being tested,
17 and in a manner reasonably calculated to prevent
18 substitutions or interference with the collection or
19 testing of reliable sample;

20 (3) that split testing procedures are utilized;

21 (4) that sample collection is documented, and the
22 documentation procedures include:

23 (A) the labeling of samples in a manner so as to
24 reasonably preclude the probability of erroneous
25 identification of test result; and

26 (B) an opportunity for the employee to provide

1 notification of any information which he or she
2 considers relevant to the test, including
3 identification of currently or recently used
4 prescription or nonprescription drugs and other
5 relevant medical information;

6 (5) that sample collection, storage, and
7 transportation to the place of testing is performed in a
8 manner so as to reasonably preclude the probability of
9 sample contamination or adulteration; and

10 (6) that chemical analyses of blood, urine, breath, or
11 other bodily substance are performed according to
12 nationally scientifically accepted analytical methods and
13 procedures.

14 The changes to this Section made by Public Act 97-18 apply
15 only to accidental injuries that occur on or after September 1,
16 2011.

17 (Source: P.A. 101-6, eff. 5-17-19.)